IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b)

Description of the case.

W.P. No. 1649 (S/S) of 2001

(Old No. 34710/1999)

Date of decision :- 01-11-2006

~~**A.F.R. (Approved for reporting)**~~

Not approved for reporting

Date :- 01-11-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Misc. Writ Petition No. 1649 (S/S) of 2001

(Old No. 34710/1999)

Govind Singh
S/o Shri Budhi Singh
R/o Village Dungi, Post Office Jamala Khal
District – Pauri Garhwal .....Petitioner

Versus

1. The Deputy Director, Pashu Palan Vibhag,
   Garhwal Mandal at Pauri

2. The Director, Pashu Palan Vibhag,
   U.P., Lucknow

3. The Chief Veterinary Officer
   Pauri Garhwal, at Pauri .... Respondents

Ms. Puja Banga brief holder of Sri Sudhanshu Dhulia-Sr. Advocate for the petitioner
Sri N.P. Shah, learned standing counsel for the respondents

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs:-

> i) To issue a writ, order or direction in the nature of certiorari, quashing the impugned order dated 30.06.1999, passed by the Respondents No. 1 (Annexure No. 1)
>
> "ii) To issue a writ, order or direction in the nature of mandamus, commanding the Respondents not to harass the petitioner and pay him salary regularly in time.
>
> iii) To issue any other writ, order or direction, which this Hon'ble Court may deem proper and appropriate under the facts and circumstances of the case.
>
> iv) To award cost of the writ petition to the petitioner.

2. The petitioner was appointed as Peon/Safaikaramchari in the pay scale of Rs. 750-870/- in Pashu Palan Vibhag at Pauri

Garhwal. The services of the petitioner were terminated by the respondent No. 3- The Chief Veterinary Officer, Pauri Garhwal on 19.09.1995. Aggrieved by the aforesaid order, the petitioner had filed the writ petition before the Allahabad High Court and the Allahabad High Court vide its order date dated 14.11.1995 observed that till further orders of this court, the operation of the order dated 19.08.1995 shall remain stayed with liberty reserved to the respondents to take a fresh decision in the matter after affording opportunity of hearing to the petitioner. Thereafter, the services of the petitioner were terminated by the impugned order on the ground that there was no vacancy available at the time of the appointment of the petitioner, as such, the services of the petitioner were terminated. Felling aggrieved by the said order, the present petition has been filed before this court. The case is listed for the admission.

3. I have heard Ms. Puja Banga, brief holder of Sri Sudhanshu Dhulia-Sr. Advocate; Sri N.P. Shah, learned standing counsel for the State/respondents and perused the record.

4. Learned counsel for the petitioner contended that the respondent No. 1 has not given any reason why 14 employees were picked up out of 137 appointments made. It was further contended that no show cause notice or opportunity of hearing was afforded by the respondents No.1 or any other authority to the petitioner before passing the impugned order. It was further contended that the petitioner should have been given opportunity of hearing before passing the impugned order. It has been alleged in para 8 of the writ petition that 137 appointments were made out of which only

14 persons were retained in service. Learned counsel for the respondents contended that the impugned order itself reveals that there was no vacancy at the time when the appointments were made by the competent authority. Learned counsel for the petitioner could not show me that there were vacancies available for the appointment of 137 persons. Thus it is obvious that the appointment of the petitioner was made illegally and without being any vacancy. If the appointments were made illegally such appointments did not confer any right to the petitioner for hearing as such, the petitioner cannot claim the right of hearing.

5. The principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straight jacket. They must yield to and change with exigencies of situations. They must be confined within their limits and can not be allowed to run wild. While interpreting legal provisions a Court of law can not be unmindful of the hared realities of life. The approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than 'precedential'. In certain circumstances application of the principle of natural justice can be modified and even excluded. It is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in the taking of prompt action, such a right can be excluded. It can also be excluded where the nature of the action to be taken, its object and purpose warrant exclusion of the right of hearing. Some times the principle of 'audi alteram partem' can not be invoked if import of such maxim would have the effect of paralyzing the administrative process or where the need for promptitude or

the urgency so demands. For example if a person is admitted in employment by a forged appointment with the connivance of any official of the establishment and after a month it is revealed that he is in service with the forged and fake appointment letter and he had drawn a month's salary. The retention of such employee even for an hour in the establishment would cause obstruction if the principal of natural justice is not excluded in such situation he would enjoy the fruits of fake and forged appointment letter for which he was not entitled for a moment. In such situation the right of hearing should be excluded.

6. In **Nazira Begum Lashkar and others Vs State of Assam-(2000)5 S.L.R. page 777,** the appellants claimed to have been appointed as Assistant Teachers of different Primary schools in the State of Assam in the year 1990 but those appointments were cancelled by the State Government. The said appointments had been made though no posts were available and the appointments had been made not in accordance with the prescribed procedure. The order of cancellation had been assailed in the High Court by filing the writ petition. The Division Bench of the High Court sustained the order of the State Government and did not interfere with the order. In appeal, the Hon'ble Apex Court held that the Division Bench of the Gauhati High Court while hearing the petition issued a direction to the Government for holding an inquiry and submitting a report in view of the alleged gross mal-practices adopted in different states. After the inquiry it was revealed that the said appointments had not been in accordance with the statutory rules and without any advertisements calling for applications. The Division Bench of the Gauhati High Court held that the initial appointment being

dubious in nature the issuance of appointments letter will not confer any right on the appointees. The Apex Court had held as under:-

> *"14. ……..while the matter was pending before the Division Bench, the Court was persuaded to appoint any Inquiry Committee, in view of the allegations of gross irregularities and illegalities committed in the matter of appointment of teachers indifferent primary schools in different Districts. The said Committee has gone into details and recorded findings that the provisions of the Recruitment Rules have not at all been followed. The High Court even has gone to the extent of recording a finding that there has been tampering of records and fabricating of documents. Since the appointments to the posts are governed by a set of statutory rules, and the prescribed procedure therein had not been followed and on the other hand appointments have been made indiscriminately, immediately after posts were allotted to different Districts at the behest of some unseen hands, such appointments would not confer any right on the appointee nor such appointee can claim even any equitable relief from any Court That apart, the appointments stood annulled hardly after six months from the date of appointments and the appointees cannot claim to be continuing for an unusual long period, so as to claim a humanitarian consideration in their case. The decisions cited by Mr. Parikh, in support of his contention, not only do not support his contention but on the other hand, appears to us to be against his contention. In Ashwani Kumar's case, 1997(2) SCC 1 this Court in no uncertain terms held that as the appointments had been made illegally and contrary to all recognized recruitment procedures and were highly arbitrary, the same were not binding on the State of Bihar. This Court further went on to hold in the aforesaid case that the initial appointments having been made contrary to the statutory rules, the continuance of such appointees must be held to be totally unauthorised and no right would accrue to the incumbent on that score. The Court had also held that it cannot be said that principles of natural justice were violated or full opportunity was not given to the employees concerned to have their say in the matter before their appointments were called and terminated…….. ……"*

7. The Hon'ble Apex Court in **Pabitra Mohan Dash and others Vs State of Orissa and others- 2001 (1) S.L.R. page 34** has observed as under:

> *"It is not disputed that with effect from 29.5.1977 Regulation 17 in the Board of Secondary Education has been brought into force which makes it obligatory for every institution to have a Headmaster who must be a trained graduate and must have 7 years of teaching experience as a trained graduate teacher. If subsequent to 29.5.1977 any appointment has been made to the post of Head master contrary to the aforesaid provisions of the Regulation then the said appointment would be invalid appointment and would not confer any right on the appointee. The expression 'approval' used in the second direction in Golakh Chandra Mohanty's case is referable to the approval contemplated under Rule 8(2)(b) of the Recruitment Rule and, therefore, if there has been an approval by the Director then in such a case the appointment made after the prior approval would not be invalidated. In our considered opinion the conclusion of the Special Bench that an approval of the Inspector is no approval in the eye of law is the correct position, and as such, does not require any interference by this Court."*

8. In **State of M.P. and others Vs Shyama Pardhi and others, (1996) 7 S.C.C. page 118,** the District Medical Officer selected the respondents and sent them to the training of Auxiliary Nurse cum Midwife. After their successful completion of the training their appointments were made in the department. A notice was served upon them intimating that their selection for training was illegal and their services would be terminated with effect fro 23.02.1994. The M.P. Public Health and family Welfare Department Non-Ministerial class III Services Recruitment Rules, 1989 prescribed qualification for the appointment of Auxiliary Nurse cum Midwife 10+2 with Physics, Chemistry and Biology as qualitative subjects . Admittedly the respondents has not

possessed that qualification. The respondents challenged the cancellation of their appointments before the Administrative Tribunal. The learned Tribunal had held that the respondent having been selected and undergone the training and the competent authority having duly appointed them, cancellation of their appointments without any opportunity was violative of the principles of natural justice and set aside the order of competent authority. While allowing the appeal the Hon'ble Apex Court observed as under:

> *"It is now an admitted fact across the Bar that the respondents had not possessed the prerequisite qualification, namely, 10+2 with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualification as a condition for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of the respondents. The question or violation of the principles of natural justice does not arise. The ratio of Sharwan kumar Jha v. State of Bihar 1991 SW(1) SCC 330 strongly relied on, has no application to the facts of this case. That was a case where the appellants possessed initial qualifications but they did not undergo the training. Since the appointment was set aside on the ground of want of training, this Court interfered with, directed the Government of reinstate them into service and further directed to them to send the appellants, therein for training."*

9. Division Bench of the court in **Special Appeal No. 94 of 2004 decided on 11th August, 2006, Jagat Singh Vs. Director of Educations and others** had taken a similar view and held that the appointment of the appellant was against the government orders and rules and the appointment order was void ab initio in the eyes of law. The orders being null and void, does not given any right of hearing to the appellant.

10. In view of the foregoing discussion, the impugned termination order dated 30.06.1999 is just and proper. As such, the writ petition devoid of merit is liable to be dismissed and is dismissed accordingly. The parties shall bear their own costs.

11. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S.Rawat, J.)

1st November, 2006
Shiv